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sions of its charter for the management and control of its affairs.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 550.]

2. Charities (§ 45 (2)*)—Charity Hospital's Exemption from Liability Not Affected by Fact that Patient Was New-Born Baby.—Under Code 1919, § 5787, a charitable hospital's exemption from liability for injuries to patient was not affected by the fact that the patient was a new-born baby, who could not contract, since the father, in the selection of the hospital for birth of the baby, assumed the risk in the baby's behalf.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 175; 16 Va.-W. Va. Enc. Dig. 651.]

3. Charities (§ 45 (2)*)—Charity Hospital Not Liable for Negligence of Physicians in Treatment of Patients.—In the absence of a special contract to the contrary, a charity hospital is not liable for the negligence of its physicians in the treatment of patients.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 175; 16 Va.-W. Va. Enc. Dig. 651.]

4. Charities (§ 45 (2)*)—Charity Hospital Not Liable for Negligence of Nurse Chosen with Due Care.—A charity hospital's liability for injuries to a patient as the result of a nurse's negligence is limited to the failure to exercise due care in the employment of the nurse, and the hospital having exercised due care in the selection of the nurse, is not liable for her negligence, though the injured patient is a pay patient, and became such without actual knowledge of the charitable character of the hospital; such exemption from liability being in the interest of public policy.

Sims and Saunders, JJ., dissenting.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 175; 16 Va.-W. Va. Enc. Dig. 651.]

Error to Circuit Court of City of Norfolk.

Action by Mrs. Durant Weston as administratrix against the Hospital of St. Vincent of Paul. Judgment for defendant, and plaintiff brings error. Affirmed.

Jas. G. Martin, of Norfolk, for plaintiff in error.

R. B. Spindle, Jr., and *Jas. E. Heath*, both of Norfolk, for defendant in error.

MATTHEWS *v.* LA PRADE.

June 16, 1921.

[107 S. E. 795.]

1. Vendor and Purchaser (§ 349*)—Notice of Motion to Recover for Breach of Option Contract Must Allege Exercise.—A notice of a

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

motion to recover damage for the breach of an option contract for the sale of real estate must allege that plaintiff exercised the option.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 128.]

2. Judgment (§ 184*)—Notice of Motion Must State Facts Entitling Plaintiff to Recover.—A notice of a motion to recover damages must state such facts as will entitle plaintiff to recover of the defendant if the facts alleged be proved, although, if the deficiency is merely in detail, defendant should call for a bill of particulars.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 128.]

3. Fraud (§ 58 (1)*)—Must Be Clearly Proved.—Fraud must be distinctly charged and clearly proved.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 496, 497.]

4. Frauds, Statute of (§ 158*)—Pleading Must Allege Facts Showing Facts to Be Established by Parol Evidence.—If parol evidence is necessary in connection with a writing to identify lands sold to show a compliance with the statute, the facts to be established by such parol evidence should be alleged in the pleading.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 538.]

5. Frauds, Statute of (§ 148 (1)*)—Unnecessary for Plaintiff to Allege Writing.—In an action at law upon a contract required by the statute to be in writing, it is not necessary for the plaintiff to allege a writing, but, if he vouches the writing in his pleading, then the writing must of itself be sufficient, or else there must be such allegation of facts to be established aliunde as, together with the writing, will make it sufficient.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 538.]

6. Frauds, Statute of (§ 158 (3)*)—Parol Evidence Received in Aid of Memorandum to Identify Land.—Parol evidence may be received in aid of memorandum under the statute to identify land upon which an option to purchase was given.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 704, 705.]

7. Frauds, Statute of (§ 158 (3)*)—Ownership of Land Shown by Parol.—Where contract calls for "one tract of land in P. county * * * containing 466 acres, more or less," it is permissible, in aid of the writing under the statute, to show by parol that the vendor owned only one tract of land of that description.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 723.]

8. Evidence (§ 448*)—Parol Evidence Admissible to Show Circumstances Surrounding Maker of Instrument.—The general rule in the interpretation of written instruments is that it is permissible for the expositor to place himself as nearly as possible in the position of the maker of such instrument, and to this end parol evidence is

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admissible to show the facts and circumstances surrounding such maker at the time the instrument was executed.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 716.]

9. Judgment (§ 184*)—Notice of Motion Must Allege Defendant Owned Only One Tract of Land Where Contract Did Not State Ownership.—In a proceeding by notice of a motion to recover damages for the breach of an option contract for the sale of real estate, written memorandum not expressly stating ownership, but calling for “one tract of land in P. county * * * containing 466 acres, more or less,” notice of motion was defective where it did not allege that the defendant owned one and only one tract of land in P. county “containing 466 acres, more or less.”

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 128.]

10. Vendor and Purchaser (§ 351 (8)*)—Measure of Damages for Breach of Land Contract Stated.—Executory and executed contracts stand on the same footing as to the measure of damages for violation thereof, and the measure of damages is the value of the land at the date of sale, and not the value at time of the breach, and if a price has been agreed on, that is the best evidence of its value and is to be accepted as such, and if the purchaser has paid anything, he is entitled to recover the money paid with interest, and also any sums properly expended by him for the examination of the title; but he is not entitled to recover for loss of his bargain.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 183.]

11. Pleading (§ 5*)—Party Claiming to Come under Exception to General Rule Must Plead Facts.—A party who claims to come within an exception to a general rule of law must, in his pleadings, state such facts as clearly bring him within such exception.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 217, 218.]

12. Judgment (§ 184*)—Party Must Be Permitted to Properly Amend Notice of Motion.—Where notice of motion in a proceeding to recover damages is defective, court must permit plaintiff to amend, if the notice as amended will state a good cause of action.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 354.]

Error to Circuit Court, Charlotte County.

Proceeding by William J. Matthews by notice of motion against J. C. La Prade. Demurrer to notice sustained, motion to amend denied, and plaintiff excepted and brings error. Affirmed.

Geo. E. Allen, of Victoria, for plaintiff in error.

R. E. Byrd, of Richmond, and *J. Taylor Thompson*, of Farmville, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.